

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

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|--|---|--------------------------|
| In the matter of the proposed amendment |) | NOTICE OF PUBLIC HEARING |
| of ARM 24.121.301 definitions, 24.121.407 |) | ON PROPOSED AMENDMENT |
| premises and general requirements, |) | AND ADOPTION |
| 24.121.601 and 24.121.605 applications for |) | |
| licensure, 24.121.803, 24.121.805, |) | |
| 24.121.807, and 24.121.809 school-facility |) | |
| and operation, 24.121.1105 teacher- |) | |
| training curriculum, 24.121.1301 salons/ |) | |
| booth rental, 24.121.1501, 24.121.1507, |) | |
| 24.121.1509, 24.121.1511, 24.121.1513, |) | |
| 24.121.1515, 24.121.1517, 24.121.1519, |) | |
| and 24.121.1521 sanitary standards, |) | |
| 24.121.2301 unprofessional conduct, and |) | |
| the adoption of NEW RULE I anonymous |) | |
| complaints, NEW RULE II disinfecting |) | |
| agents, and NEW RULE III blood spills |) | |

TO: All Concerned Persons

1. On October 29, 2007, at 1:00 p.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Barbers and Cosmetologists (board) no later than 5:00 p.m., on October 23, 2007, to advise us of the nature of the accommodation that you need. Please contact Andy Verbanac, Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2335; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsdcos@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of a periodic review, the board is generally amending its rules throughout to eliminate outdated and unnecessary provisions, clarify language, align terminology with current textbook, curricula, and industry usage, and implement better organization and proper rule numbering. It is reasonably necessary to replace "tool" with "implement" as tools are included in the definition of "implement" in current textbooks and industry practice. Punctuation is amended to comply with ARM rule formatting requirements. Implementation cites are being amended to accurately reflect all statutes implemented through the rules and delete reference to a repealed statute.

Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.121.301 DEFINITIONS The following definitions shall apply as used in this chapter:

(1) "Beauty culture" means but is not limited to hairdressing, manicuring, and esthetics.

~~(4)~~(2) "Blood spill kit" means a kit containing the equipment necessary to follow all of the blood spill procedures as required by ~~ARM 24.121.407~~ [NEW RULE III].

(2) through (4) remain the same but are renumbered (3) through (5).

~~(5)~~(6) "Clean" means the absence of, or the removal of, soil, dirt, dust, hair, or foreign material, by washing, sweeping, clearing away, or any other appropriate method rendering a sanitary condition.

(6) through (8) remain the same but are renumbered (7) through (9).

~~(9)~~(10) "Direct supervision" means the on-site physical presence of a supervisor in the clinic and basic areas of the school, where students perform educational activities and services requiring licensure, and includes communication, direction, observation, and evaluation on a consistent basis.

(11) "Disinfected" or "disinfection" means eliminating bacteria, viruses, and organisms on inanimate surfaces.

(10) and (11) remain the same but are renumbered (12) and (13).

~~(12)~~(14) "Employee" means a person employed by a salon, shop, or school and paid wages and/or commissions in accordance with federal, state, and local regulations.

(13) remains the same but is renumbered (15).

(16) "Hairdressing" means performing any or all of the following on natural or artificial hair including but not limited to hairstyling (wet, dry, thermal, and braiding), chemical services (waving, relaxing, hair coloring, and lightening), hair cutting, and shampooing and scalp treatments.

(14) through (16) remain the same but are renumbered (17) through (19).

~~(17)~~(20) "Noninvasive" means procedures confined to the nonliving cells of the epidermis, specifically the stratum corneum layer, and through which living cells are never altered, cut, or damaged. At no time shall individuals licensed in this chapter perform services where the germinative or basal layers of the skin are compromised.

(18) remains the same but is renumbered (21).

~~(19)~~(22) "Sanitized," "sanitary," or "sanitation" means ~~the absence of agents of infection, disease, or infestation by insects, vermin, soil, dust, dirt, hair or foreign material, or the removal of agents of infection, disease, or infestation by insects, vermin, soil, dust, dirt, hair or foreign material from items, implements, tools and surfaces to significantly reduce the number of pathogens or disease producing organisms found on a surface.~~

(23) "Single use items" mean items which shall be discarded after being used one time. These items include but are not limited to emery boards, nonmetal files without documentation from the manufacturer stating file is disinfectable, mandrels, and sanding bands for electric files, orangewood/birchwood sticks, wooden applicator sticks or spatulas, porous foot files, disposable gloves, paraffin liners, cotton balls, cotton strips, cotton swabs, neck strips or muslin strips, and any item that cannot be cleaned and disinfected and remain intact in its original condition.

(20) remains the same but is renumbered (24).

(25) "Supplemental barbering course" means a course of study in a licensed school, consisting of at least 125 hours in clipper cuts and 25 hours in shaving to licensed cosmetologists only, in order to meet the required educational needs for a barber license prior to taking a national written exam.

(21) remains the same but is renumbered (26).

(22)(27) "Working area" means the area of a salon, shop, or school where students or licensees perform services upon clients or members of the public.

AUTH: 37-1-131, 37-1-319, 37-31-203, MCA

IMP: 37-1-306, 37-31-101, 37-31-203, 37-31-204, 37-31-303, 37-31-305, 37-31-309, 37-31-311, MCA

REASON: The board determined it is reasonably necessary to define five new terms and modify the definition of an existing term to comply with and clarify terminology used in current rules, to define new words introduced elsewhere in this notice, and to bring language up to date with current textbooks and industry practice.

24.121.407 PREMISES AND GENERAL REQUIREMENTS (1) The premises of all salons, shops, and schools must be kept in clean, ~~sanitary~~, and ~~in~~ a safe conditions at all times.

(2) and (3) remain the same.

~~(4) If there is another salon, shop, and school connected to a salon, shop, or school, there must be a door between the establishments that must remain closed during business hours.~~

(5) remains the same but is renumbered (4).

~~(6)(5) Furniture must be kept in clean, ~~sanitary~~, and ~~in~~ a safe conditions at all times.~~

(7) remains the same but is renumbered (6).

~~(8) Food must not be prepared and sold or stored in a salon, shop, school, or booth. Beverages that are prepared beyond the addition of water are prohibited. The following exceptions apply:~~

~~(a) food and nonalcoholic beverages that the licensee has for the licensee's own consumption;~~

~~(b) items dispensed from vending machines if the machines comply with federal, state, and local laws; or~~

~~(c) if the salon, shop, or school is licensed as a food purveyor in accordance and in compliance with all state and county regulations.~~

~~(9)(7) Single service disposable drinking cups must~~ may be available for clients. ~~use unless the salon, shop, or school is licensed as a food purveyor as above.~~

~~(10) If a blood spill should occur, the licensee, student, or cadet instructor shall follow the blood spill procedure adopted by the National Interstate Council of State Boards of Cosmetology (NIC). The board adopts and incorporates by reference the blood spill procedure as adopted by NIC, August 1998. A copy of the blood spill procedure is available at the board offices, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513.~~

~~(11) The NIC blood spill procedure must be posted in all salons, shops, and schools.~~

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, 37-31-311, MCA

REASON: It is reasonable and necessary to amend this rule to eliminate the unnecessary requirement for closed doors between salons, shops, and schools. The board is unaware of any connected entities and determined that the issue would be adequately addressed and prohibited through (3) of this rule.

The board is deleting the restrictions on food in salons, shops, schools, or booths to accommodate the diverse nature of current salons and shops, many of which exist as part of a spa facility providing services for up to a half a day or more. The board concluded that the public is adequately protected without the restrictions.

The board is amending (7) to make single service disposable drinking cups an option instead of a requirement. The board always intended the choice to be within a facility's discretion and concluded the public is well protected as salons, shops, and schools must be kept in a clean and safe condition.

The board is striking the NIC blood spill procedures in (10) from this rule as the requirements are being further delineated in New Rule III in this notice.

24.121.601 APPLICATIONS FOR LICENSURE (1) Applicants for licenses to practice shall apply for licensure within ~~five~~ three years of the applicant's graduation date from a licensed school.

(2) Previously licensed applicants may apply for licensure within ten years of termination of license by meeting current board licensing requirements and successfully passing a national written exam.

(2) through (2)(a)(iii) remain the same but are renumbered (3) through (3)(a)(iii).

(iv) esthetics - 650; ~~or~~

(v) manicuring - 350; or

(vi) supplemental barbering - 150.

(b) through (e) remain the same.

(3) and (3)(a) remain the same but are renumbered (4) and (4)(a).

(b) lists of courses completed, including:

(i) through (iii) remain the same.

(4) remains the same but is renumbered (5).

~~(5)~~(6) Out-of-state student applicants shall meet the same requirements as in-state barbering, cosmetology, electrology, esthetics, or manicuring students.

(7) An applicant who has completed 1500 hours of barbering instruction or more, possesses a current barbering license, and enrolls in a course of cosmetology, shall receive 1500 hours of credit toward the 2000-hour requirement for a cosmetologist license.

(8) An applicant who has completed 2000 hours of cosmetology instruction and possesses a current cosmetology license shall complete an additional 125 hours in clipper cuts and 25 hours in shaving to qualify for barbering licensure.

(9) An applicant who has completed 650 hours of training or more, possesses a current esthetics license, and enrolls in a course of cosmetology, shall receive 650 hours of esthetics credit toward the 2000-hour requirement for a cosmetologist license.

(10) An applicant who has completed 350 hours of training or more, possesses a current manicurist license, and enrolls in a course of cosmetology will be granted 350 hours of credit toward the 2000-hour requirement for a cosmetologist license.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-31-303, 37-31-304, 37-31-308, MCA

REASON: It is reasonably necessary to amend this rule to require application for licensure within three years of graduation instead of five. The board concluded that five years is too long between graduation and actual practice because both the professions and training change rapidly and the public's best interest is served by ensuring that licensees are current on standards of practice.

The board is adding (2) to delineate the licensure requirements for previously licensed applicants as current board rules do not address this situation. Numerous former licensees have approached the board and are currently waiting for direction.

The board is amending this rule to specify the supplemental hours that may be completed for barbering licensure. Although it is a current requirement that a licensed cosmetologist complete an additional 125 hours in clipper cuts and 25 hours in shaving to qualify for a barber license, it was not clear that cosmetology schools could offer these additional hours in a separate course. The board notes that since a course was not being offered and Montana does not have any barber schools, individuals were completing the full barbering curriculum at out of state barber schools to meet the requirements. This amendment will facilitate qualified cosmetologists in obtaining the supplemental hours in this state.

It is reasonably necessary to strike subsections (2)(c), (3)(c), (5)(c), and (6)(c) from ARM 24.121.807 and add them to this rule as (7) through (10) because these sections are licensing requirements, not school curricula requirements.

24.121.605 APPLICATION FOR SCHOOL LICENSURE (1) through (2)(b)(i) remain the same.

(ii) esthetics course; ~~or~~

(iii) manicuring course; or

(iv) supplemental barbering course.

- (c) through (3)(a) remain the same.
- (b) Cosmetology schools offering courses in barbering, esthetics, ~~and/or manicuring, and/or supplemental barbering~~ shall be required to post a ~~single~~ \$5000 bond or other security for each course.
- (4) Schools shall not allow the bond or other security to be cancelled or to expire as long as the school is licensed and shall submit to the board proof of continuous annual renewal of the bond or other security ~~in the form of a certificate of insurance~~.
- (5) remains the same.
- (6) Schools shall provide true and accurate copies of all current school policies, procedures, rules, student contracts, tuition costs, and required deposits, including but not limited to those policies, procedures, and rules addressing:
 - (a) through (7) remain the same.
 - (a) compliance with board statutes, rules, policies, and procedures; and/or
 - (b) remains the same.
- (8) As part of the inspection, investigation, or audit process the board may use information found by or prepared for the Department of Education or ~~National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS)~~ other applicable national accrediting associations' or commissions' reviews.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-31-302, 37-31-311, 37-31-312, ~~37-31-321~~, MCA

REASON: It is reasonably necessary to amend this rule and add the supplemental barbering course that cosmetology schools can offer to align with the amendment to ARM 24.121.601, which specifies the supplemental hours needed for licensed cosmetologists to meet the required hours to receive a barber license.

The board is amending this rule to require that cosmetology school applicants provide a \$5000 bond or other security for each course offered instead of a single bond or security. The board decided that a \$5000 bond or security is inadequate to cover a school offering multiple courses based on a past occurrence when a single bond was insufficient to reimburse students following a school closure. The board is deleting the requirement that schools submit a certificate of insurance to prove annual bond or security renewal. The board determined it was unnecessary and overly restrictive to limit the method as long as proof is submitted.

The board is amending (8) because the board determined there is no reason to limit the sources of investigation or audit information as there are additional legitimate accrediting associations or commissions that currently exist.

24.121.803 SCHOOL REQUIREMENTS (1) Schools or courses licensed after April 1, 2001, shall provide a separate classroom, other than the clinic floor, for theory/ or basic classes.

(2) Schools shall provide a separate lunch/ or break room for students.

(3) Separate restrooms with sinks for male and female persons must be provided and shall include hot and cold running water connected to a sewer or septic system.

(4) remains the same.

(5) Schools shall display at the entrance a large legible sign with letters not less than two inches in size with the words "School of Barbering," "School of Cosmetology," "School of Electrology," "School of Esthetics," or "School of Manicuring" permanently affixed to the facility as to not be easily altered or removed by weather or individuals. Similar signs with the words "Student Work Only" shall be posted within each classroom and on the clinic floor.

(6) remains the same.

(7) Barbering schools or cosmetology schools offering a separate barbering course or supplemental barbering course shall provide the following equipment:

(a) and (b) remain the same.

~~(c) a fire extinguisher that is readily accessible to the clinic floor, classroom, storage room and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the manufacturer or local authority; and~~

(d) through (d)(iii) remain the same.

(iv) two covered wet sanitizers;

(e) through (8)(b) remain the same.

~~(c) a fire extinguisher that is readily accessible to the clinic floor, classroom, storage room and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the manufacturer or local authority; and~~

(d) through (d)(iii) remain the same.

(iv) two covered wet sanitizers;

(e) through (9) remain the same.

(a) a practice workroom; including:

(i) remains the same.

(ii) one sink, with hot and cold running water for hand washing;

(b) through (d) remain the same.

(10) Only presterilized, disposable needles may be used for electrolysis services on any individual in a licensed school, unless a properly installed, serviced, and operated autoclave is utilized for sterilization of reusable needles.

(11) through (12)(d) remain the same.

(e) one facial unit consisting of a vaporizer, high frequency unit, massage brush, vacuum spray, galvanic unit, magnifying lamp, and woods lamp;

(f) and (g) remain the same.

~~(h) one fire extinguisher that is readily accessible to the clinic floor, classroom, storage room and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the manufacturer or local authority;~~

(i) through (13)(d) remain the same.

~~(e) a fire extinguisher that is readily accessible to the clinic floor, classroom, storage room and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the manufacturer or local authority;~~

(f) and (f)(i) remain the same.

(ii) one sink for hand washing, not used for restroom facilities;

(g) through (j) remain the same.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-311, MCA

REASON: It is reasonably necessary to amend (3) to allow schools to provide restrooms with a connection to either a city sewer or septic waste disposal system. The board is amending (7) to be consistent with amendments to ARM 24.121.601 and 24.121.605 and ensure that schools offering a supplemental barbering course provide the requisite equipment.

The board is amending this rule to delete the specific requirements for fire extinguisher location and inspection. The board concluded that it is unnecessary to regulate fire extinguishers this closely as this is already done by the companies servicing the extinguishers.

24.121.805 SCHOOL OPERATING STANDARDS (1) Schools shall not advertise, enroll, or admit students until properly licensed preliminary approval for school licensure is granted.

(2) through (5)(a) remain the same.

(b) a complete and current copy of all school policies, procedures, and rules.

(6) Schools shall maintain for not less than five years, and protect from loss, damage, and tampering, a registration file on each student who attended the school. Each file must include:

(a) name, address, and phone number;

(b) through (d) remain the same.

(e) academic records, including copies of written progress evaluations, signed by the student and the school designee;

(f) through (7) remain the same.

(a) Schools may convert clock hours to credit hours using the conversation conversion rate of 30 clock hours equaling one credit hour.

(b) remains the same.

(8) Appropriately licensed instructors shall directly supervise students at all times on the school premises in the classroom and on the clinic floor. One instructor shall supervise no more than 25 cosmetology, barbering, esthetics, or manicuring students, and no more than ten electrology students, at any time.

(9) through (14) remain the same.

(15) Upon completion by students of at least 90 percent of the required hours of a course of study in barbering, cosmetology, electrology, esthetics, manicuring, or instructing, or supplemental barbering course and prior to graduating and receiving a diploma, the student shall take the school's final practical examination. The final practical examination must include all components for evaluation as provided in ARM 24.121.807 for each course of study. The final practical examination passing score shall be at least equal with the school's academic passing requirements.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-311, MCA

REASON: The board determined it is reasonably necessary to amend this rule to allow schools to advertise, enroll, and admit students after receiving preliminary board approval for licensure but prior to being licensed. This amendment will enable schools to continue student registration prior to inspection and will facilitate a more accurate enrollment estimate, which can influence school licensure requirements. The amended rule will also be consistent with ARM 24.121.605. The board is also correcting the erroneous term "conversation" to "conversion" in (7)(a).

The board is amending (15) to be consistent with amendments to ARM 24.121.601, 24.121.605, and 24.121.803 and to specify that the supplemental barbering course is included in the requirement that students complete 90 percent of the required hours in a course of study before taking the final practical examination.

24.121.807 SCHOOL CURRICULA (1) Barbering, cosmetology, electrology, esthetics, manicuring, and instructor students shall complete the course of study within ~~five~~ three years of the student's original enrollment date.

(2) The required curriculum for barbering students is as follows:

(a) ~~4425~~ 1500 hours of training, of which at least 150 hours is in theory, distributed as follows:

(i) haircutting (including proper use of implements, e.g., shears, razors, clippers, thinning shears), 250 hours;

(ii) shampoo, and scalp treatment, ~~60 hours~~ and hair styling (thermal and air styling, finger waving, hair pieces to include weaves and extensions), 230 hours;

(iii) remains the same.

~~(iv) hair styling (thermal and air styling, finger waving, hair pieces to include weaves and extensions), 170 hours;~~

~~(v)(iv) chemical services (waving, 250 hours relaxing, hair coloring, and lightening), 400 hours;~~

~~(vi) chemical relaxing, 40 hours;~~

~~(vii) hair coloring and lightening, 170 hours;~~

~~(viii)(v) chemistry, bacteriology, sanitation, and sterilization, safety, skin, hair, and scalp anatomy, physiology, blood spill procedure, and diseases and disorders of skin, hair, and scalp, 85 hours; and~~

~~(ix)(vi) shop management, business methods, customer service, appointment book, professional ethics, current state board laws, and rules, and regulations, 20 hours; and~~

~~(x) business ethics, and personal grooming, 20~~ 100 hours.

(b) ~~The remaining~~ 375 hours of instruction shall be at the discretion of the school, provided that the hours are within the applicable curriculum.

~~(c) An applicant who has completed 1500 hours of barbering instruction or more and possesses a current barbering license, and enrolls in a course of cosmetology, shall receive 1500 hours of credit towards the 2000-hour requirement for a cosmetologist license.~~

(3) The required curriculum for cosmetology students is as follows:

(a) ~~4500~~ 2000 hours of training, of which at least 200 hours is in theory, distributed as follows:

(i) manicuring, ~~430~~ 125 hours; to include:

- (A) manicures (including water, oil, hand and arm massage, paraffin wax treatments, and polish);
- (B) pedicures (including foot, ~~and ankle, and lower leg~~ massage, paraffin wax treatments, and polish);
- (C) application of artificial nails (including sculptured, nail tips, nail wraps, fills, repairs, tip overlays, fiberglass, gel, and acrylic); and
- (D) ~~chemistry, anatomy, physiology, bacteriology, safety, sanitation, blood spill procedure, diseases and disorders of the nail; and~~
- (~~E~~) the use of manicuring implements including the electric nail file;
- (ii) esthetics, 150 hours, to include:
 - (A) remains the same.
 - (B) skin exfoliation (including manual, chemical, and mechanical exfoliation);
 - (C) remains the same.
 - (D) ~~chemistry, electricity, and light therapy, anatomy, physiology, bacteriology, safety, sanitation, blood spill procedure, diseases and disorders of the skin;~~
- (iii) shampoo (including scalp treatment), hair styling (pin curls, finger waving, thermal curling, blow dry styling, braiding, back combing, and wet setting), 260 55 hours;
- (iv) chemical services (waving, 265 hours;
- (v) ~~chemical~~ relaxing (ammonium thioglycolate, sodium hydroxide methods), 40 hours; hair coloring, and hair lightening), 530 hours;
- (vi) ~~hair styling (pin curls, finger waving, thermal curling, blow dry styling, braiding, back combing, wet setting), 205 hours;~~
- (vii) ~~hair coloring and hair lightening, 225 hours;~~
- (viii)(v) hair cutting (including the proper uses of implements, e.g., shears, razors, clippers, thinning shears), 205 hours;
- (ix)(vi) salon management, business methods, customer service, appointment book, ~~and professional ethics, and current state board laws and rules,~~ 140 150 hours;
- (x) ~~current state board laws and rules, 40 hours; and~~
- (xi)(vii) chemistry, bacteriology, sanitation, and sterilization, safety, anatomy, physiology, blood spill procedure, and diseases and disorders of hair, and scalp, skin, and nails, 75 80 hours.
- (b) The remaining 500 hours of instruction shall be at the discretion of the school, provided that the hours are within the applicable curriculum.
- (c) ~~An applicant who has completed 2000 hours of cosmetology instruction and possesses a current cosmetology license shall complete an additional 125 hours in clipper cuts and 25 hours in shaving to qualify for barbering licensure.~~
- (4) The required curriculum for electrology students includes 600 training hours is as follows:
 - (a) 600 hours of training, of which at least 200 hours is of technical instruction (demonstration, lecture, classroom participation, or examination); and
 - (b) remains the same.
 - (i) a minimum of ~~30~~ 90 hours of practical operations obtained in each of the following subjects:
 - (A) through (C) remain the same.

(ii) ~~The remaining 310 hours of practical operations shall be at the discretion of the school, provided they are within the applicable curriculum.~~

(c) through (c)(xiii) remain the same.

(xiv) current state board laws and rules; and

(xv) remains the same.

(5) The required curriculum for esthetics students is as follows:

(a) ~~490~~ 650 hours of training, of which at least 65 hours is in theory, distributed as follows:

(i) bacteriology, sanitation, ~~and~~ sterilization, safety, anatomy, physiology, blood spill procedure, diseases ~~and~~ disorders of the skin, ~~55 hours~~;

(ii) electricity, chemistry, and light therapy ~~(including the use of vaporizer, high frequency, massage brush, vacuum spray, galvanic unit and lamps)~~, ~~130~~ 70 hours;

~~(iii)~~(ii) massage, skin care, ~~and~~ makeup, (including the use of vaporizer, high frequency, massage brush, vacuum spray, galvanic unit, and lamps), cosmetics, facials, essential oils, ~~170 hours~~;

~~(iv)~~ and skin exfoliation (including manual, chemical, ~~and~~ mechanical exfoliation), ~~50~~ 300 hours;

~~(v)~~ ~~current state board laws and rules~~, ~~40 hours~~;

~~(vi)~~(iii) waxing (face, neck, hands, ~~and~~ superfluous hair anywhere on the body, including tweezing), ~~45~~ 50 hours; and

~~(vii)~~(iv) salon management, business methods, appointment book, customer service, professional ethics, and current state board laws and rules, ~~70~~ 30 hours.

(b) ~~The remaining 160 hours of instruction shall be at the discretion of the school provided that the hours are within the applicable curriculum.~~

~~(c) An applicant who has completed 650 hours of training or more and possesses a current esthetics license, and enrolls in a course of cosmetology, shall receive 650 hours of esthetics credit towards the 2000-hour requirement for a cosmetologist license.~~

(6) The required curriculum for manicuring students includes 350 hours of training, of which at least 35 hours is in theory, distributed as follows:

(a) remains the same.

(i) salon management, business methods, customer service, appointment book, professional ethics, and current state board laws and rules, ~~60~~ 20 hours;

(ii) bacteriology, sanitation, ~~and~~ sterilization, safety, anatomy, ~~and~~ physiology, diseases and disorders of skin and nails, manicure chemistry, and nail care, ~~55~~ 40 hours;

(iii) manicures (including water, oil, hand and arm massage, ~~polish, paraffin wax treatments~~), ~~20 hours~~;

~~(iv)~~ pedicures (including foot, ~~and~~ ankle, and lower leg massage, ~~polish, paraffin wax treatments~~), polish applications, paraffin wax treatments, and the proper use of manicuring implements including the electric nail file, ~~45~~ 35 hours; ~~and~~;

~~(v)~~(iv) application of artificial nails, sculptured nails, nail tips, nail wraps, tip overlays, fills, ~~and~~ repairs (including fiberglass, gel, ~~and~~ acrylic), ~~440~~ 115 hours; ~~and~~;

~~(vi)~~ ~~the proper use of manicuring implements including the electric nail file~~, ~~five hours~~;

~~(vii)~~ ~~manicure chemistry and nail care~~, ~~15 hours~~; and

~~(viii) current state board laws and rules, 40 hours.~~

(b) ~~The remaining 85 hours of instruction shall be at the discretion of the school provided that the hours are within the applicable curriculum.~~

~~(c) Any applicant who has completed 350 hours of training or more, possesses a current manicurist license, and enrolls in a course of cosmetology will be granted 350 hours of credit towards the 2000-hour requirement for a cosmetologist license.~~

(7) and (8) remain the same.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-31-304, 37-31-305, 37-31-311, MCA

REASON: It is reasonably necessary to amend this rule to require that students complete a course of study within three years of original enrollment date instead of five. The board concluded that information learned in the first year or two of school is very relevant and pertinent to the practice and may not be easily retained and put effectively and safely into practice four or five years later. In addition, the board notes that education is not up to the current standards of practice after three years.

The board is amending the school curricula, specifically courses, subject matter, and individual course hours, at the schools' request. The total required hours per course of study are not being changed. Following amendment, the board will no longer require schools to micromanage and monitor students' required hours in specific subcategories of instruction, only in broader overall categories. This will allow instructors more discretion in tailoring instruction for individual students in specific areas when needed to ensure each student has adequate overall training.

It is reasonably necessary to strike subsections (2)(c), (3)(c), (5)(c), and (6)(c) from this rule and add them to ARM 24.121.601(7) through (10) because these provisions are licensing requirements, not school curricula requirements.

24.121.809 STUDENT WITHDRAWAL, TRANSFER, OR GRADUATING

(1) remains the same.

(2) When transferring between licensed schools, the transferring student shall provide the ~~new~~ school with a statement of good standing and official transcript from the previous school. The new school shall grant full credit for all hours completed and grades received ~~completed~~ by the transferring student within ~~five~~ three years of the student's original enrollment date.

(3) Upon reenrollment, a withdrawn student shall be granted full credit for all hours completed and grades received by the reenrolling student within three years of the student's original enrollment date.

~~(3)(4)~~ Schools shall not allow a transferred student ~~who reenrolls~~ to practice on members of the public until the school receives an official transcript of the student's hours and grades within the required curriculum areas.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-311, MCA

REASON: The board decided it was necessary to amend this rule to correct inaccurate terminology to "hours completed" and "grades received." The board is changing the time for a new school to grant full credit from five to three years to be consistent with proposed amendments to ARM 24.121.601.

The board is amending this rule to specify credit granted upon reenrollment following student withdrawal as current rules do not address this situation and both students and instructors have posed questions on this issue.

The board determined it is necessary to amend (4) to clarify its application to transferred students. The board never intended it to apply to reenrolling students as the school would already have the reenrolling student's hours and grades on file.

24.121.1105 TEACHER-TRAINING CURRICULUM (1) Cosmetology, esthetics, and manicuring teacher-training courses shall consist of 650 hours and include the following:

- (a) teaching methods - ~~325~~ 245 hours, including:
 - (i) through (a)(v) remain the same.
 - (vi) lesson planning, including:
 - (A) remains the same.
 - (B) practical demonstration classes;
 - (vii) through (a)(ix) remain the same.
 - (x) curriculum planning and development;
- (b) general psychology - ~~400~~ 75 hours, including:
 - (i) through (b)(iv) remain the same.
 - (v) public relations;
- (c) business methods - ~~400~~ 115 hours, including:
 - (i) and (c)(ii) remain the same.
 - (iii) student registration, and withdrawal forms, and hours (tracking, completing, calculating, and verifying);
 - (iv) remains the same.
 - (v) salon/booth rental relationship; and
 - (vi) professional ethics; and
 - (vii) current state board laws and rules.
- (d) advanced theory of cosmetology, esthetics, or manicuring, and the chemistry, safety, sanitation, bacteriology, physiology, anatomy, and diseases and disorders that apply to each course - 75 hours; and
- (e) ~~current state board laws and rules - 50 hours~~ 140 hours of instruction shall be at the discretion of the school provided that the hours are within the applicable curriculum.

(2) Barbering teacher-training courses shall consist of 500 hours and include the following:

- (a) teaching methods - ~~250~~ 185 hours, including:
 - (i) through (a)(v) remain the same.
 - (vi) lesson planning, including:
 - (A) remains the same.
 - (B) practical demonstration classes;
 - (vii) through (a)(ix) remain the same.
 - (x) curriculum planning and development;

- (b) general psychology - ~~70~~ 50 hours, including:
 - (i) through (b)(iv) remain the same.
 - (v) public relations; and
- (c) business methods - ~~70~~ 90 hours, including:
 - (i) and (c)(ii) remain the same.
 - (iii) student registration, and withdrawal forms, and hours (tracking, completing, calculating, and verifying);
 - (iv) remains the same.
 - (v) salon/booth rental relationship; and
 - (vi) professional ethics; and
 - (vii) current state board laws and rules.
- (d) advanced theory of barbering, and the chemistry, safety, sanitation, bacteriology, physiology, anatomy, and diseases and disorders that apply to each course - ~~60~~ 45 hours; and
- (e) ~~current state board laws and rules - 50 hours~~ 130 hours of instruction shall be at the discretion of the school provided that the hours are within the applicable curriculum.

(3) Electrology teacher-training courses shall consist of 100 hours and include the following:

- (a) teaching methods - ~~75~~ 55 hours, including:
 - (i) through (a)(v) remain the same.
 - (vi) lesson planning, including:
 - (A) remains the same.
 - (B) practical demonstration classes; and
 - (vii) through (a)(ix) remain the same.
 - (x) curriculum planning and development; and
- (b) general psychology - five hours, including:
 - (i) through (b)(iv) remain the same.
 - (v) public relations; and
- (c) business methods - ~~five~~ ten hours, including:
 - (i) and (c)(ii) remain the same.
 - (iii) student registration, and withdrawal forms, and hours (tracking, completing, calculating, and verifying);
 - (iv) remains the same.
 - (v) salon/booth rental relationship; and
 - (vi) professional ethics; and
 - (vii) current state board laws and rules.
- (d) advanced theory of electrology and the chemistry, safety, sanitation, bacteriology, physiology, anatomy, and diseases and disorders that apply to each course - five hours; and
- (e) ~~current state board laws and rules - ten hours~~ 25 hours of instruction shall be at the discretion of the school provided that the hours are within the applicable curriculum.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-305, 37-31-311, MCA

REASON: The board is amending the teacher-training curricula throughout in response to requests by Montana schools offering these courses of study. Following review and discussion, the board determined it is reasonable and necessary to adjust the hours required among the course categories to create discretionary instruction hours. The total required hours per course of study are not being changed. This amendment is consistent with other curricula at ARM 24.121.807 and will allow instructors more discretion in tailoring teacher-training instruction for individual students in specific areas when needed to ensure every student has adequate overall training.

24.121.1301 SALONS/BOOTH RENTAL (1) Mobile homes, moveable trailers, and structures on skids are not considered fixed places of business and will not be licensed as a salon, shop, or school.

(2) The board shall inspect and approve all salons, shops, and booths.

(a) through (4) remain the same.

(a) at least one sink basin, appropriate for the practice, within the confines of the salon or shop. The sink basin must have hot and cold running water and be connected to an ~~appropriate sewer~~ or septic system;

(b) one covered wet sanitizer of suitable size and depth, and appropriate sanitizing and disinfecting agents as defined in ARM 24.121.1513 and [NEW RULE III] ~~containing a sufficient amount of approved sanitizing agent for complete immersion of all implements, tools, and equipment (uncovered cleansers and sanitizing agents may be used, provided the cleansing and sanitizing agent is changed after each use);~~

(c) through (e) remain the same.

~~(i) towels to be used during the day may be removed from the cabinet at the beginning of the business day and stored on a shelf;~~

~~(ii) any towels not used during the course of the day shall be removed from the shelf, laundered and placed in the dust free cabinet; and~~

(f) and (5) remain the same.

(a) either a high frequency generator, galvanic generator, or electrolysis machine (dispersive or inactive electrode with connections to the machine, such as wet pad, metal rod, or water jar, necessary for electrology treatments);

(b) remains the same.

(i) only presterilized, disposable needles may be used for electrolysis services on any individual in a licensed salon, unless a properly installed, serviced, and operated autoclave is utilized for sterilization of reusable needles;

(c) covered containers for all lotions, soaps, and cotton to be used on clients;

(d) through (7) remain the same.

(8) Salon or shop owners shall be responsible for safety and sanitation in the salon or shop except sanitation and safety violations caused by the booth renter or taking place in the working area.

(9) remains the same.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, 37-31-302, 37-31-309, 37-31-312, MCA

REASON: It is reasonably necessary to amend this rule to specify that mobile homes, moveable trailers, and structures on skids are not considered fixed places of business. In response to licensee questions, the board is clarifying that these structure types may not be licensed. The board is amending (4)(a) to address situations where a shop or salon is connected to a septic waste disposal system.

It is reasonably necessary to amend (4)(b) to clarify that sanitizing and disinfecting are two separate processes and to be consistent with amendments to ARM 24.121.301 and 24.121.1513 and adoption of New Rule II. The inspectors informed the board the licensees do not understand the distinction or that both are required processes. The board is deleting the unnecessary sentence requiring complete immersion as the processes are adequately described in ARM 24.121.1511. The board is deleting "cleansers" and "cleansing" to update terminology with current textbooks and practices.

The board is striking the specific requirements for daily towel use as ARM 24.121.1301(4)(e) adequately addresses the situation. The board decided that it is unnecessary to specifically address such common sense practices and the public is still adequately protected without such excessive requirements. The board is striking "or" from (8) as erroneous. The board notes that booth renters have always been responsible for their own rented working areas and the amendment clarifies an owner's responsibility in common working areas only.

24.121.1501 PREMISES SANITATION (1) Carpeting is prohibited in the working areas, dispensaries, and restrooms of all salons, shops, and schools licensed on or after November 19, 2004.

(a) Salons, shops, and schools licensed prior to November 19, 2004, shall use appropriate, nonabsorbent floor covering to cover the existing carpet.

(b) Upon alteration or remodeling of ~~any working areas, dispensaries and restrooms~~ the salon, shop, or school, carpeted flooring must be removed and replaced with appropriate, nonabsorbent floor covering.

(2) Floors, walls, ceilings, doors, windows, screens, entrances, and receptacles, including those in the restrooms, must be maintained in a clean, ~~sanitary~~ and safe conditions at all times.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, MCA

REASON: The board is amending this rule to clarify that nonabsorbent floor covering must cover any existing carpet. Inspectors reported to the board that some salons, shops, and schools were not doing this.

The board is also amending (1)(b) to clarify that carpeting must be removed whenever there is any alteration or remodeling of any part of a salon, shop, or school, not just in the specific areas. The board's ultimate goal has always been for the removal of all carpeting from all licensed facilities for sanitation purposes.

24.121.1507 HAND WASHING FACILITIES (1) Every shop, salon, and school must have a hand washing facility that is convenient to the work areas, but not located in a restroom.

- (a) The hand washing facility must have hot and cold running water, and be connected to an ~~approved sewer or septic system~~.
- (b) A soap dispenser containing liquid soap must be provided.
- (c) Single service towels or a ~~workable hot an air blower dryer is~~ are required.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, MCA

REASON: The board is amending (1)(a) to address situations where a shop, salon, or school is connected to a septic waste disposal system. The board is amending (1)(b) to no longer require use of liquid soap. The board concluded that the public is adequately protected as long as some type of soap is provided in a dispenser. The board is also changing "a workable hot air blower" to "dryer" as the proper term and because not all hand dryers use hot air.

24.121.1509 IMPLEMENTS, TOOLS, INSTRUMENTS, SUPPLIES, AND EQUIPMENT (1) The board shall approve all new machines and devices which utilize newly introduced technology and are used in the practice of barbering, cosmetology, electrology, esthetics, or manicuring prior to the use of such machines and devices by licensees.

(2) All machines, devices, implements, ~~tools and equipment~~, shelves, tables, sinks, and other equipment used in connection with the operation of a salon, shop, or school must be:

- (a) remains the same.
- (b) ~~clean, in~~ sanitary and ~~in a~~ safe conditions at all times.
- (3) remains the same.

(4) ~~Only~~ All microdermabrasion machines must be approved by the board prior to their use by licensees and only microdermabrasion machines specifically manufactured for use in esthetics services and approved by the board are permitted. Modified or medical machines ~~shall~~ may not be used.

- (a) and (a)(i) remain the same.
- (ii) kept in ~~a clean,~~ sanitary and safe ~~manner~~ conditions at all times; and
- (iii) through (5)(a) remain the same.
- (i) be discarded after each use in accordance with federal, state, and local disposal regulations; and
- (ii) have a granule size ~~of at least~~ no larger than 120 grit or the equivalent of 100 to 102 microns.

(b) through (7) remain the same.

(8) Any and all implements, equipment, and instruments used to perform dermaplane and dermabrasion procedures including but not limited to blades, knives, scalpels, wires, and diamond fizzes are prohibited.

(9) The use of laser energy, as prescribed in ARM 24.156.501 as "any procedure in which human tissue is cut or altered by mechanical or energy forms, including electrical or laser energy or ionizing radiation" constitutes the practice of medicine and is prohibited for all individuals licensed under this chapter.

~~(8)~~(10) The use of roller or roll-on waxing systems is prohibited.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify which new machines and devices must be approved by the board. The board concluded that it is only necessary to approve those new machines and devices that utilize new technology. The board is amending this rule in response to numerous licensees seeking board approval of machines normally used in salons and not needing approval. The amendment will also address when licensees buy new machines from vendors at trade shows and use them right away. Newly developed machines that utilize new technology must be board approved prior to being used.

The board is amending this rule to clarify that all microdermabrasion machines must be approved by the board prior to use. Although a longstanding board requirement, it had not been previously delineated in rule.

The board is amending the specifications of microdermabrasion granule size because granules can be listed in grits or microns. This amendment will assist professionals by stating the conversion from one to the other.

It is reasonably necessary to delete sections (7) and (8) from ARM 24.121.1517 and add them to this rule as (8) and (9). These sections prohibit specific procedures and equipment and are more appropriately located in this rule.

24.121.1511 ~~CLEANING AND SANITIZING AND DISINFECTING TOOLS~~
IMPLEMENTS AND EQUIPMENT (1) All ~~tools, implements,~~ equipment, and electrical instruments must be thoroughly cleaned and subjected to an approved sanitizing and disinfecting process before being reused. ~~Cloth towels and other linens must be laundered before use. Single service items must be used only once and properly disposed of after use.~~

(2) ~~A sink or container must be of appropriate size to hold all tools to be cleaned plus a detergent solution. Sanitizing and disinfecting containers must be large enough to completely cover all implements with sanitizing and disinfecting agents.~~

(a) After removing all hair from ~~tools, implements,~~ the ~~tools~~ implements must be thoroughly washed in ~~warm~~ clean water and detergent solution in a clean sink or container.

(b) After ~~washing~~ scrubbing with soap and water, ~~tools~~ implements must be thoroughly rinsed in clean ~~warm~~ water.

(3) All ~~tools and~~ implements must be completely immersed in a board approved ~~sanitizing~~ disinfecting agent of proper strength and for the necessary time period according to manufacturer instructions.

(a) ~~Sanitizing containers must be large enough to completely cover all tools with sanitizing agent.~~

(b) ~~Contact points of all~~ All nonimmersible equipment and metal implements must be ~~cleaned~~ sanitized with a detergent solution and wiped or sprayed with a board approved ~~sanitizing~~ disinfecting agent.

(4) ~~Sanitized~~ After sanitizing and disinfecting, implements and tools must be stored in a clean, disinfected, dry, covered container and separated from used or soiled implements ~~and tools~~.

(5) through (5)(b) remain the same.

(c) Equipment for steam, dry heat, and glass bead sterilization methods must be checked weekly for determining equipment to be in proper working order and reaching required temperature.

(6) remains the same.

(7) Metal bits for electric files must be properly sanitized and disinfected after each client.

~~(8) If a blood spill should occur, the licensee, student or cadet instructor shall follow the procedure adopted by the National Interstate Council of State Boards of Cosmetology (NIC). The board adopts and incorporates by reference the blood spill procedure as adopted by NIC, August 1998. A copy of the blood spill procedure is available at the board offices, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513 and must be posted in public view in the salon, shop or school.~~

(9) remains the same but is renumbered (8).

~~(10)(9)~~ Foot baths bath basins must be cleaned and sanitized and disinfected after each use to include removal of all screens for cleaning and sanitizing. Tubing for airflow or water must be cleaned and sanitized.

(a) Sanitizing and disinfecting of all screens, tubing, other removable parts, and the areas behind each must be done at the end of each business day.

(10) Cloth towels and other linens must be laundered before each use.

(11) Single service items must be used only once and properly disposed of after use.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, MCA

REASON: It is reasonably necessary to amend this rule throughout to clarify that sanitizing and disinfecting are two separate processes and to be consistent with amendments to ARM 24.121.301 and 24.121.1513 and adoption of New Rule II. The inspectors informed the board the licensees do not understand the distinction or that both are required processes. The board also concluded the amendments are necessary to bring the rule up to date with current textbooks and industry practices.

It is reasonable and necessary to delete (8) as all blood spill procedures are set forth in proposed New Rule III.

The board is amending the provisions on foot bath basins to address the recent outbreak of Methicillin-resistant Staphylococcus Aureus (MRSA). The National Interstate Council of State Boards of Cosmetology, Inc. (NIC) recently published recommendations for decreasing the instance of MRSA contraction from salons. The amendments align the board requirements with NIC recommendations.

24.121.1513 SANITIZING AGENTS (1) Tools, equipment and implements used in barbering, cosmetology, electrology, esthetics or manicuring which: The following sanitizing agents are approved by the board:

~~(a) have come into contact with blood, bodily fluids and/or mucous membrane must be cleaned and disinfected, at a minimum, by complete immersion in an EPA-registered disinfectant that is:~~

~~(i) effective against HIV-1 and human hepatitis B virus and tuberculocidal; and~~

~~(ii) mixed and used according to the manufacturer's directions; and~~

~~(b) have not come in contact with blood, bodily fluids and/or mucous membrane, shall be disinfected by complete immersion in an EPA-registered, bactericidal, virucidal, fungicidal, and pseudomonacidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer's directions.~~

~~(2)(a) Detergent detergent solutions; , disinfectants and sanitizing agents must be available for inspection and clearly labeled to disclose contents and manufacturer's directions.~~

~~(3)(b) Alcohol alcohol used at 70 percent or higher strength may be used as a sanitizer with a minimum of 20 minutes contact time; ; and~~

~~(4)(c) Chlorine chlorine compounds, hypochlorited in liquid or powder form (household bleach), may be used as a sanitizing agent at 200 parts per million one part per 100 concentration with a five-minute contact time.~~

~~(2) The sanitizing agents must be available for inspection and clearly labeled to disclose contents and manufacturer's directions.~~

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, MCA

REASON: It is reasonably necessary to amend this rule to clarify the sanitizing process and specify for licensees which sanitizing agents are appropriate. The amendments are consistent with amendments to ARM 24.121.301 and 24.121.1513 and adoption of New Rule II. The board is deleting provisions on disinfecting equipment and implements from this rule as they are now set forth in New Rule II for clarity. The board is amending the concentration amounts for sanitizing agents to update terminology and align the rule with current textbooks and industry practices.

24.121.1515 TOOL IMPLEMENTS AND EQUIPMENT STORAGE AND HANDLING (1) Soiled ~~tools, implements and~~ equipment and implements must be stored separately from those that have been sanitized and disinfected.

(2) and (3) remain the same.

(4) ~~Tools, Implements, instruments, and other implements~~ equipment must not be placed onto garments or in garment pockets.

(5) ~~Tools, Implements, instruments, and other~~ equipment and implements dropped on the floor must be cleaned and sanitized and disinfected before reuse.

~~(6) Single service disposable drinking cups must be available for client use unless the establishment is licensed as a food purveyor by the department of public health and human services in accordance and compliance with all state and county regulations.~~

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, MCA

REASON: The board is amending this rule to clarify that sanitizing and disinfecting are two different processes and comply with amendments to ARM 24.121.301 and 24.121.1513 and adoption of New Rule II. The board is amending the rule to require both disinfection and sanitization of items dropped on the floor as disinfection is necessary to remove bacteria and viruses. Sanitizing does not necessarily do this. Section (6) is being deleted as it is already set forth in ARM 24.121.407.

24.121.1517 SALON PREPARATION STORAGE AND HANDLING

- (1) remains the same.
- (a) stored, handled, and applied to protect against contamination; and
- (b) through (3) remain the same.
- (4) All acids for use in chemical exfoliation must be used in concentrations of 30 percent or less, a pH level of not less than 3.0, and shall be applied in a manner and for a duration as recommended by the manufacturer.
- (5) remains the same.
- (6) When using bulk products poured into another or smaller storage container, the new storage container must be labeled with the same product name, ingredients, and warnings as the original container.
- ~~(7) Dermaplane procedures, dermabrasion procedures, blades, knives, lancets and any tools that invade the skin or living cells are prohibited.~~
- ~~(8) The use of laser energy, as prescribed in ARM 24.156.501, as "any procedure in which human tissue is cut or altered by mechanical or energy forms, including electrical or laser energy or ionizing radiation", constitutes the practice of medicine and is prohibited for all individuals licensed under this chapter.~~

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, MCA

REASON: It is reasonably necessary to delete sections (7) and (8) from this rule and relocate them at ARM 24.121.1509(8) and (9). These sections prohibit specific procedures and equipment and are more appropriately located within that rule.

24.121.1519 WASTE DISPOSAL (1) remains the same.

- (a) Waste containers must be kept clean and sanitary and plastic lined at all times.
- ~~(b) Plastic liners must be tightly secured and double bagged if necessary upon removal from the premises to prevent spillage of waste contents.~~
- (c) remains the same but is renumbered (b).
- ~~(2) Liquid waste must be disposed of in a public sewer or by a method conforming to state and local requirements and meeting with the approval of the health officer or sanitarian. Discharge of any liquid waste on the ground surface or in any other exposed manner is strictly prohibited.~~
- ~~(3) Chemical waste must be disposed of in accordance with manufacturer's directions and federal, state and local regulations.~~
- (4) remains the same but is renumbered (2).

~~(5)(3)~~ Materials, chemicals, ~~tools or liquids, and~~ implements shall be disposed of in accordance with ~~current OSHA hazard communication standards~~ federal, state, and local regulations.

~~(6)(4)~~ Aluminum oxide crystals or approved corundum ~~crystals~~ must be disposed of in accordance with federal, state, and local regulations.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, MCA

REASON: It is reasonably necessary to delete "sanitary" as using both "clean" and "sanitary" is redundant and to comply with current textbooks and industry practices. The board is deleting (1)(b) as waste containers are adequately addressed in (1). The board is combining (2) and (3) to clarify that licensees must dispose of all waste in accordance with federal, state, and local regulations and that it is the licensee's responsibility to know the applicable waste disposal regulations.

24.121.1521 PERSONAL HYGIENE (1) and (2) remain the same.

~~(a) prior to starting work before and after every client; and~~

~~(b) during work hours as often as necessary to remove soil and contamination; and~~

~~(c)~~ immediately after using the restroom.

(3) remains the same.

(4) A fresh pair of nonsterile, latex, nitrile, or vinyl disposable gloves must be worn during treatments when contact with blood or other potentially infectious materials, mucous membranes, and nonintact skin could occur.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, MCA

REASON: The board is amending this rule in response to licensee questions regarding hand washing requirements. It is reasonable and necessary to simplify the rule and clarify the board's intent that licensees are to wash their hands before and after each client. The board is adding (4) to require all licensees wear disposable gloves while providing certain treatments. The board notes that electrology infection control standards recommend protective coverage for the hands and determined it is in the public's best interest to implement this requirement for all licensees.

24.121.2301 UNPROFESSIONAL CONDUCT (1) through (1)(b) remain the same.

(c) breaching a contract with a client, student, salon or shop owner, booth renter, employee, or employer, if established as a final judgment in a court of law;

(d) through (g) remain the same.

(h) practicing with an expired license;

~~(h)(i)~~ using the traditional symbol known as the "barber pole," or any likeness thereof, in any manner that may lead the public to believe either that

barbering was being practiced in, or that a licensed barber was employed by, a salon or shop that does not employ barbers;

(i) and (j) remain the same but are renumbered (j) and (k).

~~(k)~~(l) being convicted of a misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug, controlled substances, or alcoholic beverage, or any combination of such substances;

(l) remains the same but is renumbered (m).

~~(m)~~(n) acting in such a manner as to present a danger to public health or safety, or to any client including, but not limited to, incompetence, negligence, or malpractice;

~~(n)~~(o) maintaining an unsanitary or unsafe salon, shop, booth, or school or practicing under unsanitary or unsafe conditions;

~~(o)~~(p) performing services outside of the licensee's area of training, expertise, competence, or scope of practice or licensure unless such services are not licensed or inspected by the state of Montana;

~~(p)~~(q) failing to render adequate supervision, management, training, or control of auxiliary staff or other persons, including licensees or students practicing under the licensee's supervision or control, according to generally accepted standards of practice;

(q) remains the same but is renumbered (r).

~~(r)~~(s) damaging, destroying, or attempting to destroy property or equipment of a licensee or a member of the public in a salon, shop, booth, or school;

(s) through (2) remain the same but are renumbered (t) through (2).

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-31-203, MCA

IMP: 37-1-136, 37-1-137, 37-1-141, 37-31-301, 37-31-331, MCA

REASON: The board is amending this rule to add practicing with an expired license to unprofessional conduct. Section 37-1-141, MCA, provides that practicing once a license has expired is practicing without a license and the board is amending this rule to clarify that such practice may subject the licensee to disciplinary action.

5. The proposed new rules provide as follows:

NEW RULE I ANONYMOUS COMPLAINTS (1) The board will not accept anonymous complaints.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-1-308, MCA

REASON: The board is adopting this new rule to specify that the board does not accept anonymous complaints. The board concluded that it is difficult to obtain any information regarding the licensee with no complainant to contact for such information and that it is extremely difficult to prosecute anonymous complaints.

NEW RULE II DISINFECTING AGENTS (1) All disinfecting agents must be registered with the EPA.

(2) Disinfecting agents must be available for inspection and clearly labeled to disclose contents and manufacturer's directions.

(3) All equipment and implements used in barbering, cosmetology, electrology, esthetics, or manicuring must be cleaned and disinfected, at a minimum, by complete immersion in a disinfectant that is mixed and used according to the manufacturer's directions as follows:

(a) a disinfectant that is effective against HIV-1, human Hepatitis B virus, and Tuberculocidal for equipment and implements that have come in contact with blood, bodily fluids, and/or mucous membrane; and

(b) a bactericidal, virucidal, fungicidal, and pseudomonacidal (formulated for hospitals) disinfectant for equipment and implements that have not come in contact with blood, bodily fluids, and/or mucous membrane.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, MCA

REASON: The board is adopting this new rule to clarify the disinfection process and specify for licensees which disinfecting agents are appropriate. While these are not new standards and were previously included in ARM 24.121.1513, the board is separating the sanitizing and disinfecting rules for clarity and to be consistent with amendments to ARM 24.121.301 and 24.121.1515.

NEW RULE III BLOOD SPILLS (1) If there is a blood spill or exposure to other body fluids during a service, licensees and students shall stop the service and:

(a) before returning to service, clean the wound with an antiseptic solution;

(b) cover the wound with a sterile bandage;

(c) if the wound is on a licensee's or student's hand in an area that can be covered by a glove or finger cover, the licensee or student shall wear a clean, fluid-proof protective glove or finger cover. If the wound is on the client, the licensee or student providing service to the client shall wear gloves on both hands;

(d) blood-stained tissue, cotton, or other blood-contaminated material shall be placed in a sealed plastic bag and that plastic bag shall be placed into another plastic bag (double bagged), labeled with a red or orange biohazard warning, and discarded;

(e) all implements, instruments, supplies, and equipment that have come in contact with blood or other body fluids shall be disinfected per [NEW RULE II]; and

(f) electrical equipment shall be disinfected in the same manner as nonimmersible equipment and metal implements per ARM 24.121.1511.

(2) The blood spill procedure must be posted in all salons, shops, and schools. A copy of the blood spill procedure is available at the board offices, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, MCA

REASON: It is reasonably necessary to adopt this new rule to incorporate and set forth all blood spill requirements in a single location within the board rules.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsdcos@mt.gov, and must be received no later than 5:00 p.m., November 6, 2007.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at cosmetology.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The Board of Barbers and Cosmetologists maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Board of Barbers and Cosmetologists administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be mailed or delivered to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (460) 841-2323, e-mailed to dlibsdcos@mt.gov, or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

10. Anjeanette Christensen, attorney, has been designated to preside over and conduct this hearing.

BOARD OF BARBERS AND
COSMETOLOGISTS
WENDELL PETERSEN, PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 24, 2007